



IN THE MATTER OF:

Complainant,

STATE OF ILLINOIS

DEPARTMENT OF CORRECTIONS,

EEOC: 210A03976

ALS NO: 11585

Respondent.

This matter comes on to be heard pursuant to Respondent's, State of Illinois Department of Corrections' (IDOC) Motion to Dismiss Complaint. IDOC filed the motion on November 1, 2001. As of the date of this order, Complainant has not filed a response. This matter is ready for decision.

On, July 17, 2000, Complainant filed a charge with the Illinois Department of Human Rights (Department). On July 23, 2001, the parties signed a stipulation extending the time by which the Department had to take action in this matter. Pursuant to that order, the Department's time limit was extended to October 15, 2001. However, also on July 23, 2001, Banda filed a complaint on his own behalf, with the Commission.

Respondent moved to dismiss that complaint for lack of jurisdiction. On September 18, 2001, the Commission entered an order dismissing the complaint for lack of jurisdiction, but gave Complainant the option to re-file his complaint. Complainant re-filed his complaint on September 21, 2001. On October 15, 2001, the parties signed a second agreement extending the time by which the Department had to take action in this matter. Pursuant to that second agreement, the Department's time limit was extended to January 14, 2002. On January 3, 2002, the Department dismissed the charge in this case.

Contentions of the Parties

Respondent argues that the Department retained jurisdiction over this matter as of September 21, 2001, the date Banda filed his complaint. Pursuant to Section 7A-102(G) of the Illinois Human Rights Act (Act), the Commission lacked jurisdiction when the complaint was filed, therefore it must be dismissed.

Findings of Fact

1. On, July 17, 2000, Complainant filed a charge with the Illinois Department of Human Rights (Department).
2. On July 23, 2001, the parties signed a stipulation extending the time by which the Department had to take action in this matter. Pursuant to that order, the Department's time limit was extended to October 15, 2001.
3. On July 23, 2001, Banda filed a complaint on his own behalf, with the Commission.

4. On August 31, 2001, Respondent filed its first Motion to Dismiss that complaint for lack of jurisdiction. On September 18, 2001, the Commission entered an order dismissing the complaint for lack of jurisdiction, but gave Complainant the option to re-file his complaint.
5. Complainant re-filed his complaint on September 21, 2001. On October 15, 2001, the parties signed a second agreement extending the time by which the Department had to take action in this matter.
6. Pursuant to that second agreement, the Department had until January 14, 2002 to act.
7. On January 3, 2002, the Department dismissed the charge in this case.

Conclusions of Law

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act ("Act").
2. The Commission has jurisdiction over the parties hereto for the purpose of determining whether jurisdiction over the subject matter exists.
3. Section 7A-102(G)(1) of the Illinois Human Rights Act, requires the Department, within 365 days after a charge has been properly filed, to file a Complaint with the Commission or to order that no Complaint be issued, and dismiss the Charge with prejudice without any further right to proceed. However, if the parties agree in writing to extend the jurisdictional filing then

that extra time extends the 365-day jurisdictional period. (775 ILCS 5/7A-102 (G)(1) (2000).

4. The Department's 365-day period begins running on the date a perfected or verified charge is filed.
5. A Complainant may file a complaint with the Commission, under oath or affirmation, on his own behalf within a 30-day window period, from the 365th to the 396th day, exclusive, after the filing of the Charge, if the Director has not sooner dismissed the charge. However if the parties agree in writing to extend the jurisdictional filing period, then the Complainant may file a complaint within 30 days after the last day of the agreed extension, if the Director has not sooner dismissed the charge. (775 ILCS 5/7A-102(G)(2) and (H) (2000).
6. A Complainant's 30 day filing period begins on the 366th day after a perfected or verified charge is filed or after the last day of the agreed extension period.
7. A Complainant may not file a complaint outside the 30-day time period granted by Section 7A-102(G)(2) and (H) of the Act.

8. If a Complainant files a complaint either before or after the 30-day time period granted by Section 7A-102(G)(2) and (H), the complaint is a nullity and the Commission has no jurisdiction over it.
9. Since the complaint herein was not timely filed within the 30-day window provided by Section 7A-102(G)(2), the Commission has not been properly vested with jurisdiction in the matter by the instant complaint.

Discussion

Section 7A-102(G) of the Act states:

- (1) When a charge of a civil rights violation has been properly filed, the Department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint . . . or dismiss the charge with prejudice . . .
- (2) Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission . . .

If a Complainant files a complaint either before or after the 30-day time period granted by Section 7A-102(G)(2) of the Act the Complaint is a nullity and the Commission has no jurisdiction over it. Joiner and State of Illinois, Dept. of Human Services, Chicagoread Mental Health Center, 1998 ILHUM LEXIS 178, (June 26, 1998). In the case at bar, Banda filed his complaint before the 30-day time period granted by the Act, while the Department still had jurisdiction. Therefore, the Commission lacks jurisdiction over the instant complaint.

Recommendation

I recommend that the Complaint in this matter be dismissed, without prejudice to further proceedings on the underlying Charge by the Illinois Department of Human Rights.

HUMAN RIGHTS COMMISSION

BY:
WILLIAM H. HALL
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: March 13, 2002